

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH " NEW DELHI)

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

I.T.A. No.50/Del/2011
Assessment year : 2002-03

ACIT,
Circle-14 (1),
New Delhi.

Panchanan International (P) Ltd.,
13/8, WEA, Karol Bagh,
V. New Delhi.

(Appellant)

(Respondent)

PAN /GIR/No.AACCP-8575-C

Appellant by : Shri Sanjay Jain, CIT-DR.
Respondent by : Shri Ved Jain, C.A.

ORDER

PER TS KAPOOR, AM:

This is an appeal filed by the revenue against the order of Ld CIT(A) dated 29.10.2010. The grounds raised by the revenue are as under:-

1. That on the facts and in the circumstances of the case and in law the Ld CIT(A) erred in deleting the addition of ₹.10,00,000/- made by the Assessing Officer u/s 68 of the Income Tax Act, 1961 .
2. That on the facts and circumstances of the case and in law, the Ld CIT(A) erred in ignoring the fact that the judgment of the Hon'ble Supreme Court in the case of Lovely Exports (P) Ltd. 216 CTR 199 (SC) cannot be extended to a situation where a mechanism has been formed to introduce unaccounted money in the books of accounts with the help of accommodation entry

provider which has been exposed by deep and detailed investigation carried out by the Investigation Wing of the Department. Moreover, the facts in the present case are distinguishable from the above cited case.

3. The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the grounds of appeal.

2. The brief facts of the case are that the assessee is a company and is engaged in the business of manufacturing and trading of garments. The return of income was filed on 31.10.2002 declaring income of ₹.2,64,740/- . The case was processed u/s 143(1) at returned income which however was reopened u/s 147/148 of the Act on the basis of a report from DIT that company had accepted accommodation entries of ₹.5,00,000/- each from M/s Shruti Finstock Ltd. and M/s Suma Finance & Investment Ltd. in the form of share application money. During assessment proceedings, the assessee was asked to furnish detail of share application money received during the year along with details of share application money of ₹.10,00,000/- received from the above two companies and in response the Ld AR of the assessee filed various documents/details in respect of all the subscribers. The Assessing Officer after going through the various details held that amount of ₹.10,00,000/- received from the two companies was not genuine as the said companies were held to be an entry operator in earlier years. The Ld AR of the assessee was asked to produce Director of the company which was not produced and therefore the Assessing Officer added back the amount of ₹.10,00,000/- u/s 68 of the Act.

3. Dissatisfied with the order, the assessee filed appeal before the Ld CIT(A) and submitted as under:-

- a) That the amount of ₹. 10,00,000/- was received through proper banking channel and were duly recorded in the books of

appellant as well and the said applicants were allotted shares and the respective amount was transferred to share capital account and return of allotment was filed with the Registrar of Companies.

- b) That during assessment proceedings, the assessee had filed through letters dated 15.10.2009 and 30.11.2009 share application form, confirmation, bank statements, copies of IT return and balance sheet and P&L account of the said companies.
- c) That the Assessing Officer without bringing out any adverse material from the details filed added back the amount of ₹.10,00,000/- invoking the provisions of section 68 of the Act.
- d) That the Assessing Officer had made addition ignoring the details filed by the appellant with closed eyes.
- e) That all evidences to prove the identity and creditworthiness of the applicants were filed before Assessing Officer and also genuineness of the transaction was proved.
- f) That the Assessing Officer could not bring any positive material on record to establish that the money received by the assessee on account of share capital emanated from the coffers of the appellant. Reliance was placed on the judgments in the following cases:-

1. CIT v. Lovely Exports (2008) 216 CTR 195 (SC).
2. CIT v. Value Capital Services (P) Ltd. 307 ITR 334 (Del.).
3. CIT v. Steller Investment Ltd. (2001) 251 ITR 263 (SC).
4. CIT v. Sophia Finance Ltd. (1983) 205 ITR 98 (Del.).(FB).
5. CIT v. Achal Investments Ltd. 268 211 (Del.).
6. CIT v. Dwarkadhish Investment (P) Ltd. I.T.A. 911/2010 and in I.T.A. No.913/2010.

4. The Ld CIT(A) after going through the submissions filed by the Ld AR deleted the addition made by the Assessing Officer. The relevant paragraph of Ld CIT(A)'s order is reproduced below:-

"I find that the share applicant is a limited company which is a separate and legal entity. It is assessed to tax by a different Assessing Officer. The share application money passed through the banking channels. The appellant has provided the confirmation letter with supporting evidence, like copy of acknowledgment of IT return, PAN, detail Bank statement etc. The shares were also allotted to the applicant company. The necessary evidences were provided to the Assessing Officer during course of assessment proceedings. The Assessing Officer has not made any investigation during assessment proceedings. The assessment order was passed on the basis of information received from Investigation Wing. The Assessing Officer has not brought any positive evidence on record to establish that the share application money was not genuine. Considering the judicial pronouncements quoted by the appellant, I find that the courts are liberal with reference to share capital applied by the Private Limited companies than the ordinary cash creditors. In the light of judicial pronouncements, I find that the evidence furnished by the appellant is sufficient to prove the share capital paid by the aforesaid company. After considering the totality of all the facts and circumstances and judicial pronouncements made by the jurisdictional Delhi High Court and Hon'ble Supreme Court, I hold that the addition of ₹.10,00,000/- made by the Assessing Officer is not sustainable. Hence the same is deleted."

5. Aggrieved the revenue filed appeal before this Tribunal.

6. At the outset, the Ld AR filed a copy of Hon'ble Delhi High Court in the case of Goel Sons Golden Estate Pvt. Ltd. and submitted that

case of the assessee is squarely covered by the jurisdictional High Court and argued that the Ld CIT(A) had rightly deleted the addition.

7. On the other hand, the Ld DR relied upon the order of the Assessing Officer.

8. We have heard the rival submissions of both the parties and have gone through the material available on record. We find that the assessee had accepted share application money of ₹.10,00,000/- through banking channel and had filed details/documents regarding the above said companies. The Assessing Officer without going into the documents and without conducting any enquiry rejected the details and made the addition. The Ld CIT(A) after going through the submissions made by the Ld AR had rightly deleted the addition. The judgment of Hon'ble High Court in the case of Goel Sons Golden Estate Pvt Ltd. squarely fits in the facts and circumstances of the present case. In that case, the assessee had accepted ₹.30 lakhs as share application money from five companies and had filed confirmations, PAN Numbers, bank statement, balance sheet etc. with the Assessing Officer. The Assessing Officer did not conduct any enquiries and made the addition. The relevant observation of Hon'ble High Court are reproduced below:-

“We have examined the said contention and find that the assessee during the course of assessment proceedings has filed confirmation letters from the companies, their PAN number, copy of bank statements, affidavits and balance sheet. Thereafter the Assessing Officer had asked the assessee to produce the said Directors/parties. Assessee expressed its inability to produce them. The Assessing Officer did not consequent thereto conduct any inquiry and closed the proceedings. This is a case where the Assessing Officer has failed to conduct necessary inquiry, verification and deal with the matter in depth specially after the

affidavit/confirmation along with the bank statements etc. were filed. In case, the Assessing Officer had conducted the said enquiries and investigation probably the challenge made by the revenue would be justified. In the absence of these inquiries and non verification of the details at the time of assessment proceedings, the factual findings recorded by the Assessing Officer were incomplete and sparse. The impugned order passed cannot be treated and regarded as perverse. The appeal is dismissed as no substantial question of law arises.”

9. Following the various judicial pronouncements including above, we are of the opinion that the case of the assessee is squarely covered by the above judgment and therefore the Ld CIT(A) had rightly deleted the addition. In view of the above, we do not find any reason to interfere in the order of Ld CIT(A).

10. In the result, the appeal filed by the revenue is dismissed.

11. Order pronounced in the open court on 23rd day of November, 2012.

Sd/-

(RAJPAL YADAV)
JUDICIAL MEMBER

Sd/-

(T.S. KAPOOR)
ACCOUNTANT MEMBER

Dt. 23.11.2012.
HMS

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknaya Bhawan, Khan Market, New Delhi.

True copy.

By Order

(ITAT, New Delhi).

Date of hearing	6.9.2012
Date of Dictation	22.11.2012
Date of Typing	22.11.2012
Date of order signed by both the Members & pronouncement.	23.11.2012
Date of order uploaded on net & sent to the Bench concerned.	23.11.2012